

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

ROBERT D. RIGGS,

Plaintiff,

vs.

STATE OF MONTANA (DOC), A.W.  
TOM WOOD, A.W. MYRON BEESON,  
LT. LAKEL, DAVE PINTLAND,  
SARG. WEBER, and P. MORTIN (MSP  
DHO), et al.,

Defendants.

CV 17-00009-GF-BMM-JTJ

FINDINGS AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE  
JUDGE

Plaintiff Robert Riggs, a state prisoner proceeding without counsel, filed a Notice of Removal seeking to remove an action he filed in the Third Judicial District Court, Deer Lodge, Powell County to this Court. (Doc. 1.) Removal is improper and this matter should be remanded to state court.<sup>1</sup>

28 U.S.C. § 1441 governs the removal of civil actions and provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the

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<sup>1</sup>Because remand pursuant to 28 U.S.C. § 1447(c) disposes of all federal proceedings in a case, 28 U.S.C. § 636(b)(1)(A) requires a magistrate judge to provide findings and recommendations to the district court subject to de novo review. *Flam v. Flam*, 788 F.3d 1043, 1047 (9th Cir. 2015).

defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a).

This statute does not allow a plaintiff to remove a case which they filed in state court to federal court. It only allows defendants to do so.

As such, this matter must be remanded to state court.

Based upon the foregoing, the Court issues the following:

### **RECOMMENDATIONS**

1. This matter should be remanded to the Third Judicial District Court, Deer Lodge, Powell County, Montana.

2. The Clerk of Court is directed to send a certified copy of these Findings and Recommendations to the Clerk of Court for the Third Judicial District Court, Deer Lodge, Powell County, Montana.

3. The Clerk of Court is directed to send a copy of this Order to Jeffrey Doud, Agency Legal Services Bureau, Montana Department of Justice, 1712 Ninth Avenue, PO Box 201440, Helena, MT 59620-1440.

### **NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Riggs may file objections to these Findings and Recommendations

within fourteen (14) days after service (mailing) hereof.<sup>2</sup> 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 7th day of February 2017.

/s/ John Johnston  
John Johnston  
United States Magistrate Judge

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<sup>2</sup>As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.